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manner in which it was drawn up in the office of the appellate Court, should not be allowed, where equity and good conscience are to guide us, to stand in the way of Jawahir Mal's obtaining execution for the amount found in his favor and for his costs. The application for execution was also informal, but we think it may be treated as an application to excute the decree in the case. It referred not only to the decree of the Court of first instance, but also to the decree of the appellate Court. Now as to the question of limitation. The application of the 4th December 1886, although it was struck off on the 19th February 1887, was still, in our opinion, an application for execution, or a taking a step in aid of execution within the meaning of art. 179 of the second schedule of the Indian Limitation Act, and therefore the present application is not time-barred. Owing to the view which we take and have expressed in this case it does not appear to us to be necessary to discuss the question as to the conflict between the decisions of the High Courts. With this expression of opinion we order the papers to be returned to the Commissioner of Ajmere-Marwara.

REVISIONAL CRIMINAL.

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April 3.

Before Mr. Justice Straight.

QUEEN-EMPRESS *v.* R. HAWTHORNE.

Criminal Procedure Code, ss. 191 *and* 342—*Magistrate taking cognizance of an offence on his own personal knowledge—Right of accused to have the case transferred—Power of Magistrate to question the accused.*

Where a Magistrate was found to have taken cognizance of an offence under cl. (*c*) of s. 191 of the Code of Criminal Procedure, *Held* that he had no power, on an application being made under the last clause of the section abovenamed, to refuse to transfer the case.

Held also that where a Magistrate, before evidence taken for the prosecution, put questions to the accused of the nature of a cross-examination, such procedure was illegal, as it could not be said that the questions were put "for the purpose of enabling the accused to explain any circumstances appearing against him in the evidence," within the meaning of s. 342 of the Code of Criminal Procedure.

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The facts of this case are briefly as follows :—

Robert Hawthorne was tried before the Superintendent of Dehra Dún and a jury on three charges under Act XXV of 1867 in connection with the printing and publishing of a newspaper known as "The Beacon" at Mussoorie. Prior to the issue of summons to the accused, certain correspondence had passed between the Superintendent and Assistant Superintendent of Dehra Dún and the accused, the former calling the latter's attention to certain provisions of Act XXV of 1867, the latter asserting that he had complied with them. The Superintendent of Dehra Dún also seems to have directed the police to make some inquiries in connection with the case, the result of which was embodied in a report, which, however, was not in the nature of a formal statement of facts constituting an offence alleged to have been committed by the accused. At the commencement of the trial the accused applied to the Court, under s. 191 of the Code of Criminal Procedure, for the transfer of the case, but his application was disallowed. It also appeared that before any evidence was taken in the case, the Court questioned the accused as to the charges against him, and used his answers as evidence against him in the course of the trial.

The accused was convicted on each of the charges and sentenced to fines which aggregated Rs. 500, or, in default of payment, to imprisonment amounting to two months and fifteen days.

The accused thereupon appealed to the Sessions Judge, who held that, though the procedure of the Magistrate was undoubtedly irregular, both as to his refusal to transfer the case and as to his examination of the accused, these were irregularities which could be and were cured by s. 537 of the Code of Criminal Procedure. The Judge, however, quashed the sentence of imprisonment altogether, as one not warranted by law, and in place of the original fine of Rs. 500 substituted a nominal fine of Rs. 5. The accused then applied to the High Court for revision of the Judge's order.

Mr. *A. Strachey*, for the petitioner.

The Public Prosecutor, Mr. *C. Dillon*, for the Crown.

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STRAIGHT, J.—I entirely concur with the learned Sessions Judge that the District Magistrate must be regarded as having taken cognizance of the case under cl. (*c*) of s. 191 of the Code of Criminal Procedure. It is patent from the record that there was no "complaint" or "police report," in the well-understood sense of the Code, and it is difficult to understand how the District Magistrate could even have brought himself to think that there was. It is clear to my mind that the process was really issued by him upon his personal knowledge and suspicion that an offence against Act XXV of 1867 had been committed. For this no possible fault can be found with him. On the contrary, it was his imperative duty to see that the provisions of a very salutary Act were complied with, and if they had been disobeyed that the offender should be punished. But the District Magistrate having, as I have no doubt he did, taken cognizance under cl. (*c*) of s. 191, he had no option or alternative but to grant the application of the accused to send the case to the Court of Sessions or transfer it for trial to another District Magistrate. The words "shall be entitled to require" are mandatory, and he could not refuse to comply with them. It therefore becomes unnecessary to examine the reasons given by him in his order of the 3rd October, though I may say I quite agree with the learned Judge that there is nothing in chapter XVIII of the Code which excludes or overrules the provisions of s. 191, cl. (*c*). That being so, the District Magistrate was, in my opinion, without jurisdiction and was not a "Court of competent jurisdiction," the error or defect in whose procedure could be cured by s. 537. In this respect, therefore, I differ with the learned Sessions Judge and am unable to sustain the District Magistrate's proceedings. Moreover, I am constrained to remark that it is impossible, upon a perusal of all that took place prior to the case being launched, not to feel that the Magistrate had a "personal interest" in the proceedings, and I must most emphatically express myself as to the impropriety and irregularity of the examination to which the accused was subjected on the 23rd August. The case was a warrant case and not a particle of evidence had been recorded, so that the power given by s. 342 of the Code to examine an accused "for the purpose of

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enabling him to explain any circumstance appearing in *the evidence* against him" had not come into play. A Magistrate has no right, in such a way as was adopted here, to elicit damaging or incriminating admissions from a person against whom he has issued process, for the purpose of afterwards treating them as evidence in the case, and chapter XXI of the Code gives no countenance to any such procedure. The impression left upon my mind upon a perusal of all the papers, is that the case was tried in too much of a storm, and that from the beginning to the end the Magistrate lost sight of the fact that one of the not the least important incidents in the administration of criminal justice " is to clear away everything which might engender suspicion and distrust of the tribunal, and to promote the feeling of confidence in the adminstration of justice which is so essential to social order and security" *Sergeant* v. *Dale* (1). It is, however, unnecessary for me to enter at large into the proceedings of the trial, being of opinion, as I am, that the accused having claimed his right under the last clause of s. 191 of the Code, the jurisdiction of the Magistrate was ousted.

I quash the conviction and fines in all Courts, and having regard to all that has taken place, I think no further action should be ordered by me or adopted by the local authorities. Any money that has been realised as fine should be refunded.

Before Mr. Justice Knox.

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April 4.

IN THE MATTER OF THE PETITION OF MALCOLM DECASTRO.

Criminal Procedure Code, ch. XV, s. 488.—*Order for maintenance of wife—Wife living apart from her husband for good cause.—Jurisdiction.*

Where a wife, after a temporary absence from her husband on a visit, found on her return that he was living with another woman and thereupon left him and went to live in a different district and in that district applied for an order for maintenance against her husband,—

Held that, the wife being justified in refusing to live with her husband and in choosing her own place of residence, the neglect of her husband to maintain her was an offence within the jurisdiction of the appropriate Court at the place where the wife

(1) L. R. 2 Q. B. D. 558.